

JPA File No.: 05-066
AG Contract No.: KR05-1320TRN
Project : Review Costs for Phoenix Light Rail
Section: Various; SR 101L @ Apache
TRACS No.: H6851 01C
Budget Source Item No.: N/A

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
VALLEY METRO RAIL

THIS AGREEMENT is entered into this date 18th of April, 2006, pursuant to the Arizona Revised Statutes § 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DEPARTMENT (the "State") and VALLEY METRO RAIL, INC., acting by and through its Board of Directors ("Valley Metro Rail")

I. RECITALS

1. The State is empowered by Arizona Revised Statutes § 28-401 and § 28-9201 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.

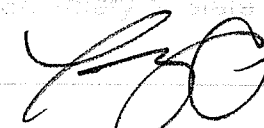
2. Valley Metro Rail is empowered by Arizona Revised Statutes 28-9203 and 40-1152 and is authorized to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of Valley Metro Rail.

3. Valley Metro Rail is a non-profit, public corporation overseeing the design, construction and operation of the Light Rail Transit Systems (LRT). The State's Intermodal Transportation Division (ITD), role, is to oversee the design and construction of segment five of the LRT phase. Construction limits are the SR 101L including frontage roads, the Apache Boulevard Bridge structure over SR 101L and any ripple effects due to the LRT activities on SR 101L, SR 202L and US 60 (traffic control). Valley Metro Rail has agreed to pay for the costs, currently estimated at \$750,000.00, herein referred to as the "Project".

4. The State will assign personnel, to oversee the administrative tasks of the design and construction of segment five of the LRT phase and ensure the construction, on State right-of-way is to State standards.

5. The State shall grant the temporary construction easements to Valley Metro Rail, prior to the segment five LRT phase.

THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows:

NO. 28189
Filed with: 4-18-06
Notary Public
By: 

II. SCOPE OF WORK

1. The State shall:

a. Upon execution of this Agreement invoice Valley Metro Rail for the actual costs associated with design and construction administrative tasks of segment five, of the LRT phase and related traffic control on SR101L, 202L and US 60. Invoices will be disbursed, before July 1 and January 1 of each Fiscal Year along with an itemized statement from the State, currently estimated at \$750,000.00.

b. Require Valley Metro Rail to have the proper right-of-way permits in place prior to the segment five, of all LRT phase's of construction on State's right-of-way.

c. Provide State personnel, for the oversight of the design guidelines and construction administration tasks of the LRT phase for the construction operating within the State's right-of-way, locations referenced in section I. of the Recitals paragraph 3. The State shall ensure the work within the States right-of-way is constructed to State standards, and oversee administrative tasks related to traffic control on the SR 101L, SR 202L and US 60.

d. Provide direction to Valley Metro Rail relevant to specific engineering design issues developed by professional engineering staff or consultants as it relates to design guidelines and construction within the State's right-of-way of the LRT phase.

e. Prior to the completion of segment five of the LRT phase of the Apache Boulevard Bridge, the State shall inspect the work within its' right-of-way and certify that all of the construction within the State's right-of-way is completed and major operations changes, etc., are fully compliant and in accordance with State specifications.

f. Address future ownership and maintenance responsibilities for the new Light Rail on Apache Boulevard and L101 under a future Operations and Maintenance Agreement with Valley Metro Light Rail.

2. Valley Metro Rail:

a. Upon execution of this Agreement and an invoice from the State, remit to the State, for the design and construction administrative tasks, associated with the segment five, of the LRT phase within State's right-of-way, locations referenced in section I. of the Recitals paragraph 3, for the construction and related traffic control on SR101L, 202L and US 60. Payments are due, July 1 and January 1 of each Fiscal Year currently estimated at \$750,000.00.

b. Obtain the necessary permits from the State through the State's Phoenix District Permit Office for the purpose of construction within the State's right-of-way.

c. Provide copies of all requests for proposals, solicitations and associated bid documents for equipment, services and related activities that pertain to the construction oversight of the LRT phases within States right-of-way. All construction changes, additions or deletions, shall have prior approval from the State and copied to the ITD personnel.

d. Pay for any risk management costs and/or judgments against the State, that the State incurs resulting from ADOT's construction oversight of the LRT phases at the location referenced in section I. of the Recitals paragraph 3.

e. Provide adequate notification regarding construction administration oversight meeting for the ITD's representatives to attend.

f. Provide to the ITD Staff, copies of all plans, drawing and project development activates related to the LRT phases of construction and administration for review comments and suggestions prior to any final recommendations taken.

g. Provide ITD staff any required Valley Metro Rail telephone directories; personnel listings as well as, a twenty-four (24) hour emergency contact person in the event of an emergency.

h. Respond to the ITD office regarding all construction oversight comments, and traffic control concerns in a timely manner to correct construction administration violations. All construction administration directions must be responded to within 48 hours unless it is a safety related issue. Safety related issues will be addressed to ADOT satisfaction immediately. Work cannot proceed if counter to ADOT Engineer's direction.

i. Conduct all traffic control work in a manner to minimize traffic congestion and interference with through traffic. All traffic control will meet the requirements of the Arizona Department of Transportation's "Uniform Traffic Control Manual".

j. Provide the funding for the design and construction administration oversight expenditures, including the State's legal office, for ADOT's Intermodal Transportation Division (ITD), role of overseeing the LRT phases at the location referenced in section I. of the Recitals paragraph 3.

k. Agree to retain ownership and maintenance of the new Light Rail Bridge on Apache Boulevard and L10, the specifics of which will be set forth in the future Operations and Maintenance Agreement.

III. MISCELLANEOUS PROVISIONS

1. Valley Metro Rail assumes full responsibility and liability for the actions of Valley Metro Rail and the State as they relate to this Agreement. The State assumes no financial obligation or liability under this Agreement. Nor does the State assume any responsibility for any resulting construction project on the LRT System. Valley Metro Rail assumes full responsibility for the design, plans, specification, reports, operation and the engineering in connection therewith and the construction of the improvements contemplated, cost over-runs and construction claims.

2. Valley Metro Rail shall require its contractors to name the State as additional insure in the contractor's insurance policies. Valley Metro Rail shall also require its contractors to name the State as additional indemnities in Valley Metro Rail's contractions with its contractors.

3. Valley Metro Rail will maintain and keep in force a policy of general liability insurance in the face amount of not less than \$25,000,000.00 from and after the onset of LRT System operations. Both the State and ADOT will be named as additional insured under such policy.

4. The State assumes no financial obligation or liability under this Agreement nor for any resulting construction project. Valley Metro Rail assumes full responsibility for the design, plans, specifications, reports, the engineering in connection therewith and the construction of the improvements contemplated, cost over-runs and construction claims; that any damages arising from carrying out, in any respect, the terms of this Agreement or any modification thereof, shall be solely the liability of Valley Metro Rail and that to the extent permitted by law, Valley Metro Rail hereby agrees to save and hold harmless and, indemnify from loss the State and ADOT, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever which is caused by any activity, condition, misrepresentation, directives, instruction or event arising out of the performance or nonperformance of any provisions of this Agreement by the State, any of its departments, agencies, officers and employees of Valley Metro Rail, any of its agents, officers and employees, or any of its independent contracts. Costs incurred by the State, any of its departments, agencies, officers or employees shall include, in the event of any action, court costs, and expenses of litigation and attorneys' fees.

5. This Agreement shall become effective upon filing with the Secretary of State.
6. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.
7. The provisions of Arizona Revised Statutes § 35-214 are applicable to this Agreement.
8. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.
9. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail, addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 S. 17th Avenue, Mail Drop 616E
Phoenix, Arizona 85007
(602) 712-8040
(602) 712-7424 Fax

Valley Metro Rail
Attn: Brian Buchanan
101 N. First Avenue Suite 1300
Phoenix, Arizona 85003
Phone # (602) 254-9896

10. This Agreement is subject to all applicable provisions of the Americans with Disability Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable Federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

11. Non-Availability of Funds: Every payment obligation of the State under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligations. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments as a result of termination under this paragraph.


12. In accordance with Arizona Revised Statutes § 11-952 (D) attached hereto and incorporated herein is the written determination of each party's legal counsel and that the parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

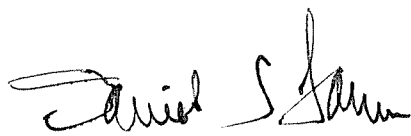
VALLEY METRO RAIL, INC.

STATE OF ARIZONA

Department of Transportation

By 

RICHARD J. SIMONETTA
Chief Executive Officer

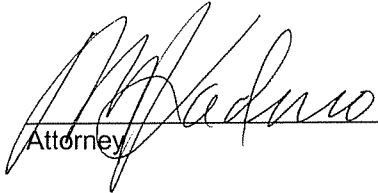
By 

DANIEL LANCE, P.E.
Deputy State Engineer, Valley Transportation

AGREEMENT JPA No. 05-066


ATTORNEY APPROVAL FORM FOR
VALLEY METRO LIGHT RAIL

I have reviewed the above referenced Agreement between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, VALLEY METRO LIGHT RAIL, and declare that this Agreement is within the powers and authority granted to VALLEY METRO LIGHT RAIL, under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this Agreement.



Attorney

Date 3/31/06

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| <p>TERRY GODDARD Attorney General</p> | <p> OFFICE OF THE ATTORNEY GENERAL STATE OF ARIZONA</p> | <p>CIVIL DIVISION TRANSPORTATION SECTION Writer's Direct Line: 602.542.8855 Facsimile: 602.542.3646 E-mail: Susan Davis@azag.gov</p> |
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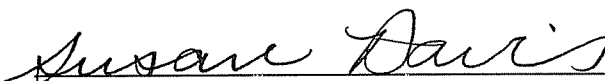
INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR05-1320TRN (**JPA 05-066**), an Agreement between public agencies, i.e., The State of Arizona and Valley Metro Rail, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: April 11, 2006

TERRY GODDARD
Attorney General


SUSAN E. DAVIS
Assistant Attorney General
Transportation Section

SED:mjf:955603
Attachment